

1 UNITED STATES BANKRUPTCY COURT  
2

3 DISTRICT OF NEVADA  
4

5 LAS VEGAS, NEVADA  
6

7 In re: THE RHODES COMPANIES, ) E-Filed: 10/21/11  
8 LLC, )  
9 )  
10 Debtor. ) Case No.  
11 ) BK-S-09-14814-LBR  
12 ) Chapter 11  
13  
14

15 TRANSCRIPT OF PROCEEDINGS  
16 OF  
17 HEARING RE: MOTIONS  
18 VOLUME 1  
19 BEFORE THE HONORABLE LINDA B. RIEGLE  
20 UNITED STATES BANKRUPTCY JUDGE  
21  
22

23 Wednesday, October 5, 2011  
24  
25 9:30 a.m.

Court Recorder: Deborah Hemstreet

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

## 1 APPEARANCES:

2 For The Litigation MICHAEL J. YODER, ESQ.  
3 Trust of the Rhodes Diamond McCarthy, LLP  
Companies, LLC: Two Houston Center  
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Houston, Texas 77010

5 For James M. Rhodes: KEVIN N. ANDERSON, ESQ.  
6 Fabian & Clendenin  
7 215 South State Street  
Suite 1200  
Salt Lake City, Utah 84111

8 For Mutual of Omaha CHET A. GLOVER, ESQ.  
9 Bank: Smith, Larsen & Wixom  
10 1935 Village Center Circle  
Las Vegas, Nevada 89134

11 For Chicago Title THOMAS A. RYAN, ESQ.  
12 Company, Fidelity Fidelity National Law Group  
National Title 3980 Howard Hughes Parkway  
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13 and Security Title: Suite 230  
Las Vegas, Nevada 89169

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1 (Court convened at 09:33:57 a.m.)

2 THE CLERK: Bankruptcy court is now in session.

3 (Colloquy not on the record.)

4 THE COURT: Be seated.

5 (Colloquy not on the record.)

6 THE COURT: All right. Rhodes Companies.

7 Appearances, please.

8 MR. YODER: Michael Yoder on behalf of the  
9 Litigation Trust of the Rhodes Companies, LLC, et al.

10 MR. ANDERSON: Kevin Anderson on behalf of  
11 Jim Rhodes.

12 MR. GLOVER: Chet Glover on behalf of  
13 Mutual of Omaha Bank.

14 MR. RYAN: Good morning, your Honor. Thomas Ryan  
15 appearing on behalf of Chicago Title, Fidelity National Title,  
16 and Security Title.

17 THE COURT: Okay. All right. So let's go ahead.

18 MR. ANDERSON: Your Honor, this is Mr. Rhodes' motion  
19 to quash.

20 THE COURT: Now, at the last hearing, I specifically  
21 asked you if you had complied with the local and federal rules  
22 which require a meet-and-confer before the motion's filed, and  
23 you told me you had done that.

24 MR. ANDERSON: Mr. Hague was here that day. I was  
25 not present. But that said, I did make calls to Mr. Roberts

1 before we filed the motion.

2 THE COURT: Where is that in any of the pleadings?

3 MR. ANDERSON: I don't know that we filed a  
4 declaration that that was done. In response to the Court's  
5 request and instruction after the last hearing, I did have a  
6 fairly lengthy conversation with Mr. Yoder on behalf of the  
7 Litigation Trust, you know, in an effort to try to resolve the  
8 issues.

9 THE COURT: So what was the context of your  
10 conversation before the motion was filed?

11 MR. ANDERSON: It was a very brief conversation that  
12 we objected and were going to file the motion to quash.

13 THE COURT: And I resent being lied to. Your counsel  
14 last time implied to me that you had met the requirements of  
15 the local rule which requires -- and the federal rule.

16 Rule 7037 says, "Discovery motions will not be considered  
17 unless a statement of moving counsel is attached certifying  
18 that after consultation or effort to do so the parties have  
19 been unable to resolve the matter without Court action."

20 MR. ANDERSON: Well --

21 THE COURT: And that implies -- and then the federal  
22 rule requires a good-faith attempt. None of this we're filing  
23 the motion or else. Where is your good-faith effort to consult  
24 before you filed the motion?

25 MR. ANDERSON: Well, Mr. Roberts' response was that

1       they weren't going to modify or change any of their subpoenas,  
2       you know. I mean, they were going forward no matter what. We  
3       had no alternative but to file the motion to quash.

4                 THE COURT: But where's the certificate about your  
5       consultation?

6                 MR. ANDERSON: That we failed to include, your Honor.  
7       I apologize.

8                 THE COURT: Well, I really feel like I have been  
9       misled because counsel seemed to indicate there was a sincere  
10      effort to try and resolve this before the motion was filed.

11                MR. ANDERSON: Well --

12                THE COURT: And he implied --

13                MR. ANDERSON: -- I felt --

14                THE COURT: -- to me that --

15                MR. ANDERSON: -- like --

16                THE COURT: -- why I couldn't find that in their  
17       motion, and I was just crazy.

18                MR. ANDERSON: And I feel like there was a sincere  
19       effort, but I think both parties are fairly entrenched which is  
20       evidenced by the fact that even in response and following the  
21       hearing last -- was it last week -- you know, still the parties  
22       are, you know, somewhat entrenched.

23               The Litigation Trust is apparently making accommodations  
24       with some of the parties. But the scope and extent of those  
25       accommodations, you know, we're not entirely aware of.

1           The only party that I know that they have made no effort  
2 to make any accomodation with is the Fabian & Clendenin law  
3 firm which has filed a motion to quash and an objection up in  
4 Utah.

5           We did receive the letters from them that they've  
6 indicated to the Court that they sent advising parties not to  
7 respond until first after the hearing last week and then after  
8 this hearing.

9           THE COURT: All right.

10          So, Mr. Yoder, do you know what attempts were made to  
11 attempt to confer before the motion was filed?

12          MR. YODER: Unfortunately, your Honor, Mr. Roberts  
13 who had handled the initial call is not here today. He just is  
14 celebrating the birth of his first child over the weekend.

15          THE COURT: Okay.

16          MR. YODER: It is my understanding based on  
17 conversations with him that the initial call was made regarding  
18 whether or not we would consent to the order on the motion to  
19 shortening time, not on the actual substance of the subpoenas  
20 themselves for the initial one.

21          For the second attempt to meet and confer which occurred  
22 last Friday, Mr. Anderson did call me. We did have a lengthy  
23 conversation. We went back and forth.

24          We couldn't come to agreement on narrowing the subpoena in  
25 terms of time or in terms of a limited number of just specific

1 transactions.

2 I offered to limit the subpoena if there were any  
3 specific requests in each of the subpoenas that he had any  
4 issue with.

5 We had provided a copy of each subpoena to Mr. Anderson,  
6 and I didn't hear back from him on that proposal, and that the  
7 reply was filed about an hour later.

8 THE COURT: Well, I feel like I've been lied to. And  
9 before Mr. Anderson (sic) appears again, he'd better be ready  
10 to explain his answers to me --

11 MR. ANDERSON: Okay.

12 THE COURT: -- and what attempts were really made.

13 MR. ANDERSON: Well, I --

14 THE COURT: Not Mr. Anderson. I'm sorry.

15 You're Mr. Anderson.

16 MR. ANDERSON: Mr. Hague.

17 THE COURT: Mr. Hague.

18 MR. ANDERSON: Yeah. Well, I apologize. There's  
19 certainly no intent to mislead the Court.

20 THE COURT: I mean, he was very adamant about it, and  
21 the way he responded was sort of like I'm crazy. It's  
22 obviously here. It's not.

23 MR. ANDERSON: Well, and, again, you know, I think he  
24 sincerely thought that it was there, but it --

25 THE COURT: I doubt it.

1 MR. ANDERSON: It was an oversight.

2 THE COURT: I don't think he knew what I was talking  
3 about and pretended he did.

4 MR. ANDERSON: Well, I don't know. I apologize  
5 again, your Honor. Would you like me to address --

6 THE COURT: Go ahead.

7 MR. ANDERSON: -- the status of where we're at now?

8 THE COURT: All right.

9 MR. ANDERSON: Following my conversation with  
10 Mr. Yoder, there are two things that are apparent to me. The  
11 first I think goes to, you know, the entire motion to quash.

12 It is very clear to me that the Litigation Trust has  
13 specific litigation in mind. In fact, Mr. Yoder told me they  
14 have a complaint filed and -- I mean, not filed -- prepared and  
15 ready to file articulating issues with specific transactions  
16 and specific events that they're ready to go on.

17 That said, they wanted to do these broad, extremely  
18 overinclusive subpoenas to try to get additional information to  
19 perhaps search for additional causes of action or as he put it  
20 to refine the scope of some of their transactions that they  
21 have questions about.

22 That is an improper use of a Rule 2004 examination. To  
23 use it to support a litigation effort is an improper use of  
24 Rule 2004.

25 What they should do is file their complaint, and then

1 let's go through the normal discovery process. The  
2 J&R Trucking case as in others say that Rule 2004 is not a tool  
3 for discovery.

4 Their response to our motion is replete with we're trying  
5 to do discovery. We're trying to seek discovery here. We're  
6 trying to seek discovery of that.

7 That said and if the Court is willing to allow them to  
8 proceed with the 2004 examinations, Mr. Yoder has all but  
9 conceded to me on the phone -- and he has certainly conceded to  
10 several of the parties with whom they claim to have negotiated  
11 a reduction of the scope of the subpoenas -- that they have  
12 conceded that the subpoenas are overlybroad.

13 These things are way out of line. They point to,  
14 for example, a couple of checks written to  
15 Fabian & Clendenin.

16 Rather than asking about those specific events, they ask  
17 for everything going back to January 2005, not only for any  
18 debtor entities that Fabian & Clendenin may have represented,  
19 but, also, all of the other nondebtor entities as well as  
20 individuals who aren't even part of the bankruptcy like  
21 Mr. Huygens.

22 Again, that's quite excessive. They want personal diaries  
23 of the attorneys. They want --

24 THE COURT: Well, didn't you tell me there's a  
25 separate motion to quash for them someplace else?

1 MR. ANDERSON: On the Fabian one, there is, but --

2 THE COURT: Okay.

3 MR. ANDERSON: But --

4 THE COURT: So I don't want to hear about that.

5 MR. ANDERSON: Well, that is replete. Every one of  
6 the law-firm subpoenas are identical except for the name of the  
7 law firm.

8 Every one of the title-company subpoenas are identical  
9 except for the names of the title companies. Every one of the  
10 financial-institution subpoenas are identical except for the  
11 names.

12 THE COURT: Well --

13 MR. ANDERSON: There is no effort --

14 THE COURT: -- how does Mr. Rhodes have standing to  
15 object to a subpoena asking about transactions with  
16 Mrs. Rhodes?

17 MR. ANDERSON: One, he's a subject of a lot of these  
18 subpoenas. They are seeking his personal information. And to  
19 the extent that Rule 45 allows a party to object, he is a party  
20 to the bankruptcy proceedings.

21 The Litigation Trust is well-aware of him. We're  
22 well-aware of the Litigation Trust. We are a creditor in this  
23 bankruptcy proceeding.

24 We have a pending proof-of-claim issue that we'll be  
25 taking further evidence on in December before the Court. Those

1 issues haven't even been resolved.

2 If Mr. Rhodes is not a party, then there is no party. If  
3 somebody who is actively involved in disputes with --

4 THE COURT: But --

5 MR. ANDERSON: -- the bankruptcy --

6 THE COURT: But they're asking --

7 MR. ANDERSON: -- estate --

8 THE COURT: -- for documents involving her, so how  
9 does he have objection, a right to object?

10 MR. ANDERSON: Well, they're asking for documents  
11 relating to him.

12 THE COURT: I understand, but you just told me that  
13 it's overbroad because they're asking about documents for other  
14 people.

15 MR. ANDERSON: Other people and for him. I mean,  
16 it --

17 THE COURT: I understand.

18 MR. ANDERSON: Okay.

19 THE COURT: You just told me your objection was  
20 because they were asking for documents, for example, for his  
21 daughter. How does he have standing to object to documents  
22 requested concerning his daughter?

23 MR. ANDERSON: I don't know that he does.

24 THE COURT: Okay. Then why did you tell me that?

25 MR. ANDERSON: Well, he has standing because he --

1                   THE COURT: To object vis-a-vis him.

2                   MR. ANDERSON: Vis-a-vis him --

3                   THE COURT: Okay.

4                   MR. ANDERSON: -- And vis-a-vis the entities, the  
5 nondebtor entities, that he controls.

6                   THE COURT: Okay. So he doesn't control -- how do we  
7 know what entities he even controls?

8                   MR. ANDERSON: Well, the --

9                   THE COURT: He's kind of kept all that quiet.

10                  MR. ANDERSON: Well, the reorganized debtors and the  
11 Litigation Trust are well-aware of it. They've listed them  
12 all.

13                  Anyway, I think it's fairly clear that these subpoenas  
14 are designed to assist in the litigation as an improper  
15 purpose.

16                  And I think that the Litigation Trust has acknowledged in  
17 numerous conversations with at least several of the recipients  
18 of these that they are extremely overbroad. And at a minimum,  
19 this Court needs to have them reign these in.

20                  I asked Mr. Yoder on the telephone call. Supposedly,  
21 they have specific transactions that they are concerned  
22 about.

23                  Mr. Roberts' declaration does not identify them. He just  
24 has conclusions about things that appear to be or that may have  
25 happened.

1                   THE COURT: But, now, you haven't even bothered to  
2 set forth how they could be limited, right? You've just said  
3 it's all overbroad. I'm not going to -- they shouldn't respond  
4 to anything.

5                   MR. ANDERSON: If --

6                   THE COURT: The whole thing --

7                   MR. ANDERSON: If --

8                   THE COURT: -- should be quashed.

9                   MR. ANDERSON: That's our position, yes.

10                  THE COURT: Okay. You haven't even bothered to say  
11 how they're narrowed. You're saying just because some might be  
12 overbroad the whole thing should be quashed.

13                  MR. ANDERSON: Well, that's all we're required to do,  
14 then the burden shifts to them to show good cause as to why  
15 they should be allowed to ask for anything.

16                  THE COURT: Okay.

17                  MR. ANDERSON: And Mr. Roberts' declaration doesn't  
18 do that. He is very general. They supposedly have some  
19 specific transactions.

20                  They have not identified anything other than, you know,  
21 two payments that were supposedly made to Fabian and Clendenin  
22 which --

23                  THE COURT: I told you I'm not going to consider the  
24 Fabian one because it's under --

25                  MR. ANDERSON: I --

1                   THE COURT: You've got a motion to quash someplace  
2 else.

3                   MR. ANDERSON: I understand. That's the only  
4 concrete example of two specific transactions. As to all the  
5 others, you know, they don't tell us what events they are  
6 looking into.

7                   Some of those events could be subject to a release that  
8 Mr. Rhodes is entitled to that he negotiated as part of the  
9 reorganization plan. Some of them may not be.

10                  But it's now their burden to explain to the Court, you  
11 know, what they're after and why and for the Court to limit it  
12 to those reasons at a minimum.

13                  I think these things are so grossly overbroad they should  
14 all be thrown out, and they should be required to go back to  
15 the drawing board and have some very targeted discovery  
16 requests if this Court's even going to allow them to conduct  
17 litigation discovery as part of a 2004 examination.

18                  THE COURT: Okay.

19                  MR. ANDERSON: Thank you, your Honor.

20                  THE COURT: All right. Response.

21                  MR. YODER: Good morning, your Honor. I'll try to be  
22 brief as I feel like our briefing handled a lot of these issues  
23 fairly in a fair amount of detail.

24                  First of all, I think the threshold issue here and  
25 probably a big part of the reason between the contentions

1       between the two parties is just the fundamental  
2       misunderstanding that Mr. Anderson has on the purpose of 2004.

3           As we point out in our brief, we cited some cases that  
4       say, for example, quote, "Rule 2004 allows a trustee to do the  
5       necessary investigatory work without the need for initiating  
6       formal litigation which would just trigger the traditional  
7       discovery tools.

8           Indeed, one purpose of such an examination is to give the  
9       trustee the information needed to determine whether litigation  
10      should be filed," and that's the in re J&R Trucking case cited  
11      in our brief.

12           We also cited a case that says, "Even if litigation is,  
13      quote, 'sure to be filed,' unquote, Rule 2004 discovery is  
14      still appropriate because discovery presuit, quote, 'can be  
15      critical to ensure that no viable cause of action is lost.'

16           For while it may be certain that suit will be filed  
17      against a potential defendant, that does not mean all possible  
18      claims, some of which might soon be lost to limitations, have  
19      been identified," and that's the in re Mirant case cited on  
20      page 6 of our brief.

21           And that's exactly what's going on here, your Honor. We  
22      readily concede we are investigating claims against Mr. Rhodes  
23      and the Rhodes entities pursuant to as contemplated by the  
24      plan.

25           As Mr. Anderson indicated, we've identified a number of

1 transactions that, you know, if we had to file suit in the near  
2 future we could.

3 There are additional transactions that we think are  
4 suspicious on their face primarily involving transfers of  
5 debtor assets to buy land for the Rhodes entities.

6 And what we don't want to do is file a suit that we have  
7 indicia of -- you know, every first indicia of fraud, and  
8 then we end up having to go through pleading amendments and  
9 narrow later on when we can file the most narrow suit possible  
10 now.

11 And, yes, to the extent we identify additional claims in  
12 doing that, we'll certainly pursue those claims to ensure that  
13 they're not lost to limitations.

14 But the primary focus of our efforts really are to narrow  
15 the number of transactions that we're looking at because, right  
16 now, we're looking at potentially hundreds of transactions  
17 involving tens if not hundreds of millions of dollars as it  
18 relates to these lands transactions.

19 As to the burden of good cause, I think it's pretty  
20 obvious to everyone in the courtroom that there will be  
21 potential claims against Mr. Rhodes.

22 I think the fact that Mr. Rhodes has fought as vigorously  
23 as he has in defending a proof of claim in which in his own  
24 words he's repeatedly said the sole purpose of the proof of  
25 claim is to obtain a \$10,000,000 setoff, it's pretty clear that

1 even Mr. Rhodes recognizes that there will be some claims.

2 There will be liability.

3 As we cited in our brief, you know, it is appropriate for  
4 a Court to rely on representations of counsel as to the  
5 existence of good cause when there are potential claims, and  
6 that's the in re Metiom case cited on page 6 of our brief  
7 again.

8 So, in short, as we point out in our brief, we have found  
9 a bunch of claims, already, payments made to Jim Rhodes for his  
10 personal income taxes, to fund his divorce settlement, to pay  
11 legal fees and other professional fees rendered solely for  
12 Mr. Rhodes to acquire real property, et cetera.

13 I think it's perfectly appropriate that the Trust would  
14 investigate these claims to narrow the scope of any litigation  
15 instituted against Mr. Rhodes.

16 As to any concerns the Court may have as the various other  
17 entities, the individuals as they're defined in the subpoena,  
18 the Rhodes entities as they're defined in the subpoena, the  
19 debtors, obviously, they represent all the claims that all the  
20 debtors hold, so there just happen to be a lot of debtors in  
21 this case with the way the business was structured.

22 The Rhodes entities, again, to the extent that Mr. Rhodes  
23 controls them, there's money flowing all around between the  
24 different debtors and the Rhodes entities which is why a  
25 substantive consolidation was granted in this case.

1           And a big part of the reason that we're looking at  
2 transactions involving the different Rhodes entities and the  
3 individuals is there are a lot of instances in which money had  
4 been moved upstream from the debtors up to these Rhodes  
5 entities and then from the Rhodes entities to Jim Rhodes or the  
6 Rhodes entities for some other purpose.

7           And what we can see from the debtor records is money goes  
8 from debtor to third party or debtor to a Rhodes entity for  
9 what appears to be a purpose of the Rhodes entities or for  
10 their benefit.

11          But we don't necessarily know what they did with it, and  
12 that's what we're really trying to figure out. We don't want  
13 to get into any indirect -- you know, step into any indirect  
14 benefit-rule problems, et cetera.

15          As for the Fabian subpoena, obviously, that's not before  
16 the Court today. That is the one -- we received the motion to  
17 quash after we filed our response to the motion to quash filed  
18 by Rhodes which is why we represented to the Court that as far  
19 as we're concerned everything's been amicably resolved.

20          If Mr. Anderson is prepared today to represent to the  
21 Court that he has no conflict of interest because Fabian  
22 represented solely Rhodes, we'll gladly withdraw that subpoena  
23 today.

24          To the extent that there is no representation of the  
25 debtors, then I think we could be pretty confident that all the

1 funds from the debtors that went to Fabian did not confer any  
2 benefit of the debtors for purposes of our litigation.

3 And I think that just to -- in conclusion, I think that  
4 brings us to the final point is we really -- the whole purpose  
5 of standing requirements or prohibitions of advisory opinions  
6 in the first place in all litigation contexts is so that the  
7 Courts aren't wasting their time issuing opinions on  
8 hypothetical concerns, and that's essentially what Mr. Rhodes  
9 is asking the Court to do here.

10 You know, we have amicably resolved or are in the  
11 process of resolving our differences with all the other  
12 entities.

13 To the extent, you know, who he -- Mr. Rhodes has no idea  
14 more than we do how many different documents some of these  
15 entities may or may not have.

16 It's ridiculous to quash a subpoena because an entity may,  
17 in fact, have a lot of the records if no one knows. And at the  
18 end of the day, that entity may have 200 pages, not 2,000,000,  
19 and I think it's appropriate that we would just resolve those  
20 subpoenas with the parties themselves.

21 Does the Court have any questions?

22 THE COURT: No.

23 Thank you.

24 MR. YODER: Thank you, your Honor.

25 THE COURT: Response.

1                   MR. ANDERSON: I would encourage the Court to read  
2 the J&R Trucking case because it is a case that says that a  
3 Rule 2004 examination is not to be used in lieu of discovery.

4                   Mr. Yoder's explanation again continues the vague  
5 references to transactions. Apparently, they have some detail  
6 about transactions that they need additional information about.

7                   Rather than drafting subpoenas that go after the  
8 information that they need, they have drafted, you know,  
9 uniform sets of subpoenas that regardless of the role that the  
10 people play or that they know or have suspicions about the role  
11 that they played, they ask for information going back to 2004  
12 or 2005.

13                  If the Court is not going to quash the subpoenas, they  
14 should be tailored to the specific transactions. Apparently,  
15 they're doing that in these negotiations, although we have no  
16 idea what they're doing.

17                  We have yet to hear about one specific transaction  
18 involving a title company that is subject to some legitimate  
19 concern that they want specific documents regarding, the same  
20 with bank transfers and the same with work that was performed  
21 by law firms.

22                  Thank you, your Honor.

23                  THE COURT: Okay. Well, I'm going to deny the motion  
24 to quash. 2004 is an appropriate method to examine the acts  
25 and conduct of the debtor, and, obviously, it will lead to

1 litigation from time to time.

2 Is it the smartest way that the Trust should make  
3 discovery? I don't know. That's not my business, but it is a  
4 legitimate way.

5 And it's true while an action is pending that a 2004  
6 should not be used it's not yet, and to suggest that a 2004  
7 isn't appropriate where you're going to lead to litigation is  
8 nonsense because that's the whole point.

9 You do a 2004 to see whether or not there are fraudulent  
10 conveyances, to see whether or not there are transfers that  
11 should be set aside, to see whether or not third parties have  
12 assets of the debtor.

13 We already know that Mr. Rhodes kind of led a slipshod way  
14 of doing business. We have in the proof-of-claim process. He  
15 is claiming he should be reimbursed for paying a third party  
16 because he wanted to keep it off the books.

17 All these kinds of transactions deserve investigation in  
18 other contexts as well. We know he didn't care much about his  
19 books and records from the way he did his business.

20 And, also, it's not the debtor's place to say this  
21 subpoena is burdensome. The persons who are subpoenaed are  
22 perfectly able to do that.

23 Secondly and finally, there was not a good-faith attempt  
24 to try and resolve this. It's just Jim Rhodes saying no and  
25 counsel taking no for an attitude, and I'm not going to

1 tolerate that kind of conduct.

2 Now, do we have -- has the Mutual of Omaha one been  
3 resolved, yet, or do we need to argue that one?

4 MR. GLOVER: Your Honor, I believe the  
5 Mutual of Omaha is all but resolved. We're trying to hammer  
6 out just a few of the deadlines for production, and then at  
7 such time we'll withdraw the objection.

8 THE COURT: All right. Okay. Thank you very much.

9 All right.

10 That's all.

11 Thank you.

12 THE CLERK: That's it?

13 Thank you, your Honor.

14 MR. ANDERSON: Thank you, your Honor.

15 MR. YODER: Thank you, your Honor.

16 THE CLERK: All rise.

17 (Court concluded at 09:57:46 a.m.)

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1 I certify that the foregoing is a correct transcript  
2 from the electronic sound recording of the proceedings in  
3 the above-entitled matter.

4

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6 /s/ Lisa L. Cline

10/21/11

7 Lisa L. Cline, Transcriptionist

\_\_\_\_\_  
Date

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